

REMARKS/ARGUMENTS

Claims 1-37 are active in this application. Claims 6, 7, 9-13, 27-30, 33 and 34 have been withdrawn.

Support for Claim 1, 36 and 37 is found on page 28, lines 15-25 of the present application.

No new matter is believed to have been added.

The pending claims in this application are directed to a composition comprising at least one structuring polymer; at least one oil selected from the group consisting of hydrocarbon-based liquid oils and silicone oils; and silicone elastomer particles comprising a composite of spherical or globular particles of cured silicone rubber having an average particle size of from 0.1 to 100 μm and a coating layer of a polyorganosilsesquioxane resin bonded to the spherical or globular particles of cured silicone rubber, wherein the coating is present in an amount of from 1 to 500 parts by weight per 100 parts by weight of the particles of cured silicone rubber.

As discussed on page 2, lines 12-16, the composition surprisingly provides compositions with "noteworthy cosmetic properties." Moreover, as discussed throughout the specification, the claimed compositions, in addition to providing good cosmetic properties, are stable (see, e.g., page 1, lines 15-20). These statements are supported by the Rule 132 Declaration of one of the named inventors, Dr. Lu, previously made of record in this case.

The Examiner has maintained the rejection based on Ferrari's EP 1 266 648 (which appears to correspond to U.S. application serial no. 10/170,566). In the Official Action, notwithstanding the fact that the Ferrari EP application does not describe silicone resin bonded to silicone rubber cores, the rejection is based on the unsupported supposition that that mixing of the silicone elastomer powder and amphoteric siloxane would inherently give

rise to what is claimed and that the bonding would naturally result. First, it should be noted that the Ferrari EP publication does not describe amphoteric silicone mixed with the solid particles, although the Ferrari EP publication does describe the addition of amphoteric silicone. In any event, while Applicants disagree with the conclusion, certainly it is recognized that the Ferrari EP publication does not describe the silicone elastomer particles, explicitly or inherently by mixing, as is now claimed, i.e.,

...silicone elastomer particles comprising a composite of spherical or globular particles of cured silicone rubber having an average particle size of from 0.1 to 100 μm and a coating layer of a polyorganosilsesquioxane resin bonded to the spherical or globular particles of cured silicone rubber, wherein the coating is present in an amount of from 1 to 500 parts by weight per 100 parts by weight of the particles of cured silicone rubber.

Moreover, as noted above, Applicants have previously provided data in a Declaration demonstrating that compositions containing a structuring polymer, an oil and silicone elastomer particles of a silicone rubber core bonded to a silicone resin coating (KSP-100, see page 28 of the specification as well) are more stable while at the same time providing good textural properties when compared to compositions not containing all of these ingredients (see paragraph 4 of the Declaration).

As explained by Dr. Lu in paragraph 10 of the Declaration:

The results of these experiments demonstrated that the preparation of a composition combining a structuring polymer (using nylon-611/dimethicone copolymer as representative) and silicone elastomer particles of a silicone rubber core coated with silicone resin (using KSP-100 as representative) with oil surprisingly provides stable compositions which are suitable for cosmetic use (in terms of texture) compared to similar compositions containing only the structuring polymer. In addition, I have no reason to believe that the results obtained with nylon-611/dimethicone and KSP-100 as a representative of the structuring polymer and coated silicone elastomer would not be similar for other combinations of as defined in the claims of the present application.

Moreover, Dr. Lu explains in paragraph 11 that:

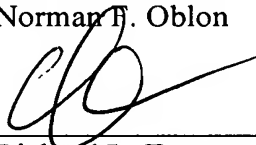
These results are important because they demonstrate that the combination of the components in the claimed composition has significant advantages as discussed above. While the structuring polymer and the coated silicone elastomer were known separately for use in cosmetics, there was not a discussion of combining these nor that in combination these two components one could obtain a composition having the stability and texture properties observed for compositions as claimed.

In view of the above, Applicants request that the rejection under 35 USC 102(b) and 103(a) be withdrawn.

A Notice of Allowance for all pending claims is also requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon



Richard L. Treanor
Registration No. 36,379

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)

Daniel J. Pereira, Ph.D.
Registration No. 45,518